

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JULIAN LOPEZ

* CIVIL ACTION NO.

V.

* 5:19-CV-1131

TOLTECA ENTERPRISES INC.,
DBA PHOENIX RECOVERY GROUP

*

DEFENDANT'S ORIGINAL ANSWER

Now comes Defendant Tolteca Enterprises Inc., dba the Phoenix Recovery Group who files this Original Answer ("PRG").

1. ¶1 is an introductory paragraph and does not require a specific answer.
2. ¶2 is an introductory paragraph and does not require a specific answer.
3. ¶3 asserts the nature of the action that Defendant violated the FDCPA. Defendant denies violating the FDCPA.
4. ¶4 is a statement of jurisdiction. Defendant does not contest jurisdiction at this time but does reserve its right to challenge jurisdiction as the case develops.
5. ¶5 is a statement on venue. Defendant does not contest venue.
6. ¶6 is neither admitted nor denied due to insufficient information about where Plaintiff resides.
7. ¶7 is admitted. Defendant is headquartered in San Antonio, Texas.
8. ¶8 is admitted. Defendant is a debt collector.
9. ¶9 is admitted.
10. ¶10 is admitted.
11. ¶11 on information and belief Plaintiff incurred a debt. Defendant contends that as

aa guarantor he did not act as a consumer nor did he engage in any use for personal, family and household purposes. Therefore, consumer status is denied.

12. ¶12 at spendingome stage of the dealings between the parties the Plaintiff acted as a guarantor of a lease contract. Admitted.

13. ¶13 due to insufficient information and development of the case in discovery, Defendant neither admits nor denies this allegation.

14. ¶14 and 15, Defendant is reviewing the documents in question and subject to that review Defendant conditionally admits the allegation regarding an unchecked box concerning lease guaranty. On information and belief, Defendant did not provide Exhibits A and B to Plaintiff. It is believed the apartment complex provided those documents to the Plaintiff.

15. ¶16 admitted.

16. ¶17 is being investigated so unable to admit or deny the allegation at this time.

17.. ¶18 is neither admitted nor denied due to insufficient information. Defendant does not know if Plaintiff's credit score dropped 100 points as alleged and in any event other factors may have affected Plaintiff's credit score.

18. ¶19 Defendant is investigating whether Plaintiff did dispute the credit reporting and so is unable to admit or deny at this time.

19. ¶20, 21, and 22, cannot be admitted nor denied due to insufficient information.

20. ¶23 is disputed. Denied.

21. ¶24. Admit that a credit report was made. The rest is denied.

22. ¶25. Denied subject to further investigation and review of the account.

23. ¶26 is a contention allegation and not an assertion of facts so the allegation is denied.

24. ¶27, 28, and 30 are admitted. 29 is denied.

25. ¶31, Defendant denies violating the FDCPA.

26. ¶32, the assertion of an injury in fact seeks a legal conclusion and is contested; therefore, the allegation is denied. Defendant denies Plaintiff is protected by the FDCPA as he was not a consumer.

27. A jury demand need not be admitted nor denied.

28. The prayer for relief is denied. Plaintiff should take nothing.

29. Defendant asserts the bona fide error defense set forth in the FDCPA.

30. Defendant asserts the 1 year Statute of Limitations defense set forth in the FDCPA.

31. Defendant would show that the apartment lessor, is or may be liable to Defendant for misleading Defendant as to the guarantor status and that it failed to secure a proper lease contract guaranty but represented that Plaintiff was a guarantor. For such cause, Defendant may join the lessor as a party hereto and to hold said party liable to indemnify Defendant on Plaintiff's claims, damages, and demands.

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CERTIFICATE OF SERVICE

I certify that the foregoing has been e-filed with the court's CM/ECF electronic filing system which will give electronic notice to Plaintiff's attorney, William M. Clanton on December 13, 2019.

S/Tom Clarke

